

**DEVELOPMENT AGREEMENT  
ESTABLISHING DEVELOPMENT STANDARDS  
FOR THE WATERFRONT AT MARKETPLACE DEVELOPMENT**

This Development Agreement Establishing Development Standards for the Waterfront at Marketplace Development (the "Agreement") is made and entered into, effective as of the \_\_\_\_ day of August, 2022, (the "Effective Date") by and between the **City of Kyle, Texas**, a Texas home rule municipal corporation (the "City"), and **Plum Creek Developers, LLC** (the "Developer"). The City and the Developer are sometimes referred to herein as the "Parties." The Parties agree as follows.

**Section 1. Purpose; Consideration.**

- (a) The Developer owns that certain 18.844 acre tract located in Hays County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Property") and wishes to develop the Property for mixed use (the "Development"). The Developer desires that the City be able to enforce the development standards set forth in **Exhibit B** attached hereto and incorporated herein for all purposes through its building permit and inspection processes, given that House Bill 2439 adopted in the 86<sup>th</sup> Legislative Session limits the ability of cities to enforce certain development standards governing building materials by ordinance.
- (b) The Developer will benefit from the City enforcing the Development Standards as set forth herein because it will be more efficient and cost-effective for compliance to be monitored and enforced through the City's building permit and inspection processes and will help ensure that the Development is built out as planned by the Developer after conveyance to the builder of homes or other buildings and structures authorized by the applicable zoning regulations. The City will benefit from this Agreement by having assurance regarding certain development standards for the Development, having certainty that such Development Standards may be enforced by the City, and preservation of property values within the City.
- (c) The benefits to the Parties set forth in this Section 1, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

**Section 2. Term; Termination.**

- (a) The initial term of this Agreement shall be in full force and effect from the Effective Date hereof for a period of ten (10) years, subject to earlier termination as provided in this Agreement. The Initial Term shall automatically be extended for an additional five (5) years for a total term of fifteen (15) years ("Extension Term") upon Developer receiving temporary or final certificates of occupancy with respect to buildings containing a minimum of 250 dwelling units. Unless earlier terminated as provided in this Agreement, this Agreement shall terminate upon the earlier of the Initial Term or Extension Term, if applicable or the issuance of the final certificate of occupancy for the final multifamily

structure in the Development.

- (b) The Parties further mutually agree that this Agreement shall be in full force and effect upon the date above first written, provided that the City may terminate this Agreement if Developer defaults under the terms of this Agreement, subject to the notice and cure provisions in Section 6.
- (c) City acknowledges that Developer may seek new entitlements to use and amendments to entitlements to use and new or amended development standards for the Development.

### **Section 3. Development Standards.**

- (a) **Architectural Design.** The multifamily portion of the Planned Unit Development approved by Ordinance No. \_\_\_\_\_ (“PUD”) on even date will have building material components designed and built to the design standard as shown in **Exhibit B**. City staff has the authority to grant minor changes to the building materials shown in **Exhibit B**, however the building material components must substantially comply with said exhibit. Developer acknowledges and agrees that the building material components of the Architectural Design is a covenant that runs with the Property and is binding upon future owners of the Property.
- (b) **Building Permits.** The Developer acknowledges and agrees that compliance with Section 3(a) will be a condition of issuance of building permits. Developer further agrees that the City may use its building permitting and inspection enforcement processes and procedures to enforce the requirements of Section 3(a) above, including but not limited to rejection of applications and plans, stop work orders, and disapproval of inspections for applications and/or work that does not comply with this Agreement. Applications and plans for a building permit must demonstrate substantial compliance with this Agreement in order for a building permit to be issued. Applications for building permits must be in substantial compliance with this Agreement, as well as the Applicable Regulations, in order for such application to be approved and a building permit issued. Plans demonstrating substantial compliance with this Agreement must accompany a building permit application and will become a part of the approved permit. Any multifamily structure constructed on the Property must comply with this Agreement and the Applicable Regulations for a certificate of occupancy to be issued for such structure.
- (c) **Certificates of Occupancy.** The Developer agrees that certificate(s) of occupancy for the shell buildings for the north retail portion of the PUD must be issued before the Developer is issued a final certificate of occupancy for any of the residential buildings in the multifamily portion of the PUD.

**Section 4. Development of the Property.** Except as modified by this Agreement, the Development and the Property will be developed in accordance with all applicable local, state, and federal regulations, including but not limited to the City’s ordinances and the zoning regulations applicable to the Property, and such amendments to City ordinances and regulations that may be applied to the Development and the Property under Chapter 245, Texas Local Government Code,

and good engineering practices (the “Applicable Regulations”). If there is a conflict between the Applicable Regulations and the Development Standards, the Development Standards shall control.

- (a) The City shall not impose any architectural standards or require any architectural, design review or similar approvals to be obtained from the City other than those set forth in **Exhibit B** for the multifamily residential portions of the Development.

**Section 5. Assignment of Commitments and Obligations; Covenant Running with the Land Changes.**

- (a) Developer’s rights and obligations under this Agreement may be assigned by Developer to one (1) or more purchasers of all or part of the Property; provided the City Council must first approve and consent to any such assignment by Developer of this Agreement or of any right or duty of Developer pursuant to this Agreement, which consent shall not be unreasonably withheld, conditioned, or delayed.
- (b) This Agreement shall constitute a covenant that runs with the Property and is binding on future owners of the Property, including but not limited to the building material component of the Architectural Design, and a copy of this Agreement shall be recorded in the Official Public Records of Hays County, Texas. The Developer and the City acknowledge and agree that this Agreement is binding upon the City and the Developer and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.
- (c) The parties acknowledge that refinements and further development may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the architectural details of the Development and with respect to those items covered in general terms under this Agreement and Exhibit B. If and when the parties find that minor changes or adjustments or other implementations are necessary or appropriate to Exhibit B, they shall, unless otherwise required by law, effectuate such minor changes or adjustments through administrative amendments approved by the City Manager or his/her designee, which, after execution, shall be attached hereto as an addenda to such Exhibit and become a part hereof. This Agreement may be further changed or amended from time to time as necessary, with approval by the City Council of the City and Developer as noted in Section 2(c) above. Any minor changes or adjustments shall not be deemed to be an overall amendment to this Agreement, and unless otherwise required by law, no such minor administrative changes or adjustments shall require prior notice or hearing.

**Section 6. Default.** Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In

the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy. In addition to the other remedies set forth herein, the City may withhold approval of a building permit application or a certificate of occupancy for a structure that does not comply with the Development Standards.

**Section 7. Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

**Section 8. Attorneys' Fees.** In the event of action pursued in court to enforce rights under this Agreement, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

**Section 9. Waiver.** Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

**Section 10. Force Majeure.**

- (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemics; pandemics, landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- (b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- (c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that

the settlement be unfavorable in the judgment of the party having the difficulty.

**Section 11. Notices.** Any notice to be given hereunder by any party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Kyle  
Attn: City Manager  
100 W. Center Street  
Kyle, Texas 78640

with copy to:

The Knight Law Firm, LLC  
Attn: Paige Saenz  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed:

Plum Creek Developers, LLC  
265 Fieldcrest Dr.  
Marble Falls, Tx 78654  
Attn: Joe Brooks

with a copy to:

FSG Lawyers P.C.  
19800 MacArthur Boulevard, Suite 1100  
Irvine, CA 92612  
Attn: James D. Stroffe

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

**Section 12. Waiver of Alternative Benefits.** The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

**Section 13. Severability.** Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining

provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

**Section 14. Agreement and Amendment.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and except as otherwise provided, may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

**Section 15. No Joint Venture.** The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

**Section 16. No Third Party Beneficiaries.** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

**Section 17. Effective Date.** The Effective Date of this Agreement is the defined date set forth in the first paragraph.

**Section 18. Recordation.** This Agreement or a memorandum of Agreement acceptable to the City and Developer shall be recorded in the Official Public Records of Hays County, Texas.

**Section 20. Texas Law Governs.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Hays County, Texas. Venue shall lie exclusively in Hays County, Texas.

**Section 21. Statutory Verifications.**

- (a) To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Developer represents that neither the Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the

meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

- (b) To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Developer represents that Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
- (c) The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, “boycott energy company” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).
- (d) The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer

or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

**Section 22. Time is of the Essence.** It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

**Section 23. Exhibits.** The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A** – Property Description
- Exhibit B** – Architectural Material Design

EXECUTED in multiple originals this the \_\_\_\_ day of September, 2022.

**CITY:**  
**City of Kyle, Texas**  
a Texas home-rule municipal corporation

Attest:

By: \_\_\_\_\_  
Name: Jennifer Holm  
Title: City Secretary

By: \_\_\_\_\_  
Name: Travis Mitchell  
Title: Mayor

**THE STATE OF TEXAS           §**  
**COUNTY OF HAYS               §**

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Travis Mitchell, Mayor of the City of Kyle, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas



**DEVELOPER:**  
**Plum Creek Developers, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE STATE OF TEXAS**                   §

**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ company, on  
behalf of said company.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT "A"

### Description of Property



#### POLITICAL SUBDIVISION DESCRIPTION

DESCRIPTION OF A CALCULATED 18.844 ACRE TRACT OF LAND, SITUATED IN THE HENRY LOLLAR SURVEY, ABSTRACT NUMBER 290 AND COMPRISED OF A PORTION OF LOT 1A OF THE RESUBDIVISION OF LOT 1 PLUM CREEK PARK, A SUBDIVISION OF RECORD IN BOOK 10, PAGES 10-11 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 37.526 ACRE TRACT OF LAND AS DESCRIBED IN A DEED TO PLUM CREEK DEVELOPERS, LLC OF RECORD IN DOCUMENT NUMBER 11015327 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID CALCULATED 18.884 ACRE TRACT OF LAND, AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at the most northerly corner of said Lot 1A, being also the most westerly southwest corner of Lot 2B of the Replat of Plum Creek Park Lot 2, a subdivision of record in Document No. 17034221 of the Official Records of Hays County, Texas, and being in the east line of Missouri Pacific Railroad and International & Great Northern Railroad, a 100 foot wide Right-of-Way;

**THENCE** with the north line of said Lot 1A and the southwest line of said Lot 1A, the following nine (9) bearings and distances (all bearings and distances noted below are derived from record information in Documents noted above);

1. S 70° 21' 37" E, for a distance of 176.53 feet to a calculated point of record,
2. S 24° 23' 06" E, for a distance of 143.06 feet to a calculated point of record,
3. S 12° 20' 02" E, for a distance of 90.04 feet to a calculated point of record,
4. S 02° 27' 00" W, for a distance of 140.63 feet to a calculated point of record,
5. S 16° 00' 15" W, for a distance of 115.60 feet to a calculated point of record,
6. S 44° 50' 39" W, for a distance of 70.35 feet to a calculated point of record,
7. S 12° 49' 37" E, for a distance of 103.49 feet to a calculated point of record,
8. S 56° 56' 48" E, for a distance of 149.23 feet to a calculated point of record, and
9. S 86° 36' 55" E, for a distance of 84.19 feet to a calculated point of record and being the southeast corner of the herein described tract

Zamora, L.L.C. dba "ZWA" Firm No. 10062700  
1425 South Loop 4, Buda, TX 78610 ~ P.O. Box 1036, Buda, TX 78610  
Phone: 512-295-6201 ~ Fax: 512-295-6091

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M:\\_Austin-Projects\1081 PLUM CREEK DEVELOPMENT\01 18.844 ACRE ZONING CHANGE\M-B DESC

**THENCE N 80° 56' 38" W** (a calculated bearing and distance) crossing said Lot 1A and said 37.526 acre tract, for a distance of **366.65** feet to a calculated point in the west line of said Lot 1A, the west line of said 37.526 acre tract and the east line of said Missouri Pacific Railroad and International & Great Northern Railroad;

**THENCE N 10° 15' 09" E** (record bearing from Plat for Lot 1A), with the east line of said Missouri Pacific Railroad and International & Great Northern Railroad for a distance of **2,283.93** feet to the **POINT OF BEGINNING** and containing **18.844** acres of land, more or less.

THIS DOCUMENT WAS PREPARED UNDER 22 TAC § 663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

BEARINGS ALONG MISSOURI PACIFIC RAILROAD AND THE NORTH LINE OF LOT 1A WERE TAKEN FROM PLAT RECORDED IN BOOK 10, PAGE 10 -11 OF THE PLAT RECORDS HAYS COUNTY, TEXAS.

BEARINGS AND DISTANCES ALONG THE WEST RIGHT OF WAY OF MARKET PLACE AVE WERE TAKEN FOR DOCUMENT NO. 17026876 OFFICIAL PUBLIC RECORDS HAYS COUNTY, TEXAS.

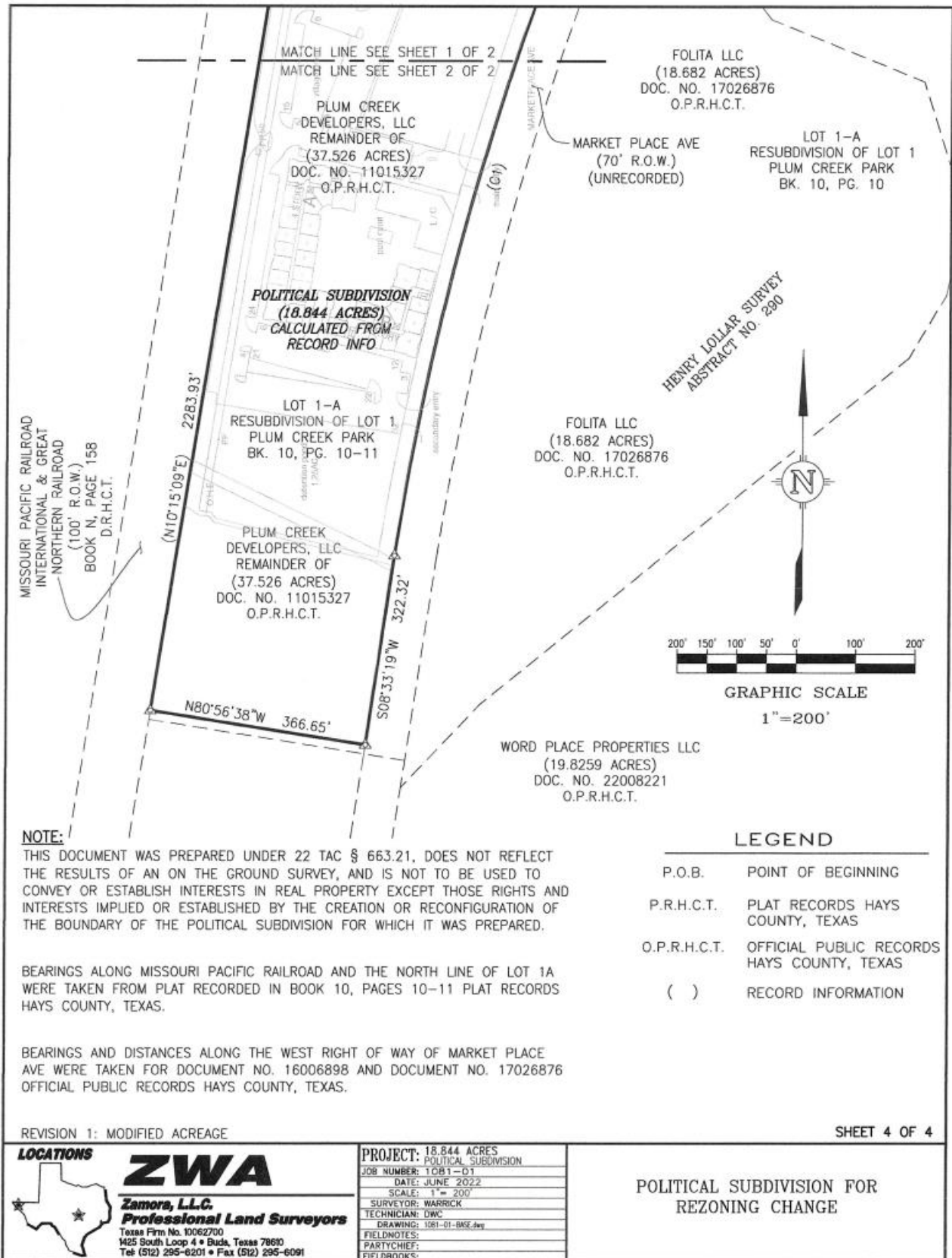
REVISION 1: Modified Acreage

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**Exhibit “B”**  
**Architectural Design**  
**Elevations**



